

# The Gazette of India

EXTRAORDINARY

PART I—Section 1

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No. 466] NEW DELHI, MONDAY, NOVEMBER 17, 1952

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 17th November, 1952

No. 19/298/52-Elec.III.—WHEREAS the elections of Shri Arjundas Tulsidas and Shri Purnam Gangaram, as members of the Legislative Assembly of Ajmer State from the Ajmer I (South West) Constituency of that Assembly have been called in question by a joint election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Khilumal son of Shri Topandas, Yatimkhana, outside Delhi Gate, Ajmer and Shri Shivanand Sewakram; resident of Nawab-Ka-Bera, Ajmer;

AND WHEREAS the election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said petition, has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, STATE OF AJMER, AJMER.

ELECTION PETITION No. 298 of 1952.

Coram:

Shri J. D. Sharma, <i>Chairman,</i>	
Shri C. Jacob,	} <i>Members of the Election Tribunal.</i>
Shri S. N. Agarwal	

1. Shri Khilumal son of Shri Topandas, residing at Yatimkhana outside Delhi Gate, Ajmer, and
2. Shri Shivanand Sewakram, resident of Nawab-ka-Bera, Ajmer,—  
*Petitioners.*

*Versus.*

1. Shri Arjundas son of Shri Tulsidas, Advocate, Ajmer.
2. Shri Parasram Gangaram, Regar Mohalla, Ajmer.
3. Shri Gulabchand Jain, Aryanagar, Ajmer.
4. Shri D. Vable, Aryanagar, Ajmer.
5. Shri Kodumal Pahargunj, Ajmer.
6. Shri Mithanlal Jain Bhagwangunj, Ajmer.
7. Shri Rangraj Mehta, Rajendra Bhawan, Beawar Road, Ajmer.
8. Shri Pooranchand, Gopal Bhawan, Diggibazar, Ajmer.

9. Shri Ramchand, Imdad Hussain Building Diggibazar, Ajmer.
10. Shri Vidhiyaram Chand Baori, Ajmer.
11. Shri Rikhabchand Jain Aryanagar, Ajmer.
12. Shri Menghoomal, Nawab-ka-Bera, Ajmer.
13. Shri Pukhraj, Regran Mohalla, Diggibazar, Ajmer.
14. Shri Satyapal C/o J. B. Mangharam Co., Ajmer.
15. Shri Durgashanker, Nallabazar, Chowdhar Mohalla, Ajmer.
16. Shri Kanhiyalal Arya, Aryanagar, Prabhasi Suddan, Ajmer.
17. Shri Lachmansingh Nathari, Srinagar Road, Ajmer.
18. Shri Baldeo Pershad, Pahargunj, Ajmer.
19. Shri Tikam Hardhanji, Pahargunj, Ajmer.
20. Shri Taransingh, Sartaz Hotel, near Majestic Talkies, Ajmer.
21. Shri Omprakash, Srinagar Road, Ajmer.
22. Shri Braham Deo, Ramgunj, Ajmer.—Respondents.

### JUDGMENT

This is a petition challenging the election of the respondents Nos. 1 and 2 from a double constituency to the Legislative Assembly of the State of Ajmer.

The petition is contested by the respondents Nos. 1 and 2 *inter alia*, on the ground that it is barred by limitation.

The following issue has been framed:—

Whether or not, the petition is within limitation?

**Finding.**—It is common ground between the parties that the last date for filing the election petition was 24th May, 1952. The petition was sent by registered post on 23rd May, 1952, and was received by an official of the Election Commission on 26th May, 1952, who made the following endorsement on it:

“Election Petition No. 298 of 1952 received by me this 26th day of May, 1952, by registered post”.

On the arguments addressed by the parties, the following points arise for decision:—

1. Is the Post Office an agent of the Election Commission?
2. Was the delay in the presentation of the petition condoned by the Election Commission?
3. Is there a sufficient ground for condoning the delay?

**Point No. 1.**—The question whether the Post Office is an agent of the Election Commission must be decided on the plain language of Section 81(2) of the Representation of the People Act (No. XLIII of 1951), which says that an election petition shall be deemed to have been presented to the Election Commission—

- (a) When it is delivered to the Secretary to the Commission or to such other officer as may be appointed by the Election Commission in this behalf.
  - (i) by the person making the petition; or
  - (ii) by a person authorised in writing in this behalf by the person making the petition; or
- (b) When it is sent by registered post and is delivered to the Secretary to the Commission or the officer so appointed.

Evidently, an election petition is presented to the Election Commission only when it is *actually* delivered to the Secretary to the Commission or such other officer as may be appointed by the Election Commission in this behalf. It, therefore, clearly follows that a Post Office is not an agent of the Election Commission and delivery to the Post Office is not the delivery to the Election Commission. The same conclusion is reinforced by para. 1(3) of Chapter 13 in the Hand-book for Candidates for Election issued by the Election Commission, India, which says

that the election petition must be presented by delivery to the Secretary to the Election Commission or the Assistant Secretary to the Election Commission—

- (i) by yourself personally; or
- (ii) by any other person authorised in writing by you; or
- (iii) by registered post (posting is to be done sufficiently in advance so as to ensure actual physical delivery of the cover containing your petition to the Secretary or Assistant Secretary to the Election Commission).

**N.B.**—If the cover is delivered by post after the last date on which an election petition can be filed, it will be dismissed as time-barred.

It has been pointed out on behalf of the petitioners that the instructions contained in the Handbook mentioned above cannot have any statutory force. This is true but all the same the instructions do serve as a safe and reliable guide to the interpretation of the provisions contained in Section 81 of the Representation of the People Act. On the interpretation of the provisions substantially analogous with those of Section 81, it was held by the Election Tribunal in *S. Jaidev Singh Vs. B. Ujagar Singh* and others reported in *Indian Election Petitions Vol. II, 1923, p. 132*, that the Post Office was clearly the agent of the petitioner and not of the Returning Officer. Similar view was taken in the Election Petition reported in the *Indian Election Petitions Vol. IV, p. 78*. Also Nanakchand Pandit has expressed similar view in his well-known treatise, the law of Elections and Election Petitions in India, p. 376. Reliance by the petitioners has been placed upon the case reported in 1924 A.I.R. Bombay 205 in which it was held that the Post Office is the agent of the person to whom the bill or note is posted if there be an express or implied authority to send by post but if there be no such authority the Post Office is the agent of the sender. The ruling is based on Section 46 of the Negotiable Instruments Act and has no bearing on the present case. Further reliance was placed upon 1937 A.I.R. Bom. 39, in which it was held that if there is an express or implied authority to send title deeds by post, the Post Office is the agent of the addressee, if there is no such authority the Post Office will be the agent of the sender. The question in that case was whether under the terms agreed upon between the parties, there was an express or implied authority to send the title deeds by post. In view of the provisions in Section 81 that an election petition shall be deemed to have been presented to the Election Commission when it is delivered to the Secretary or such other officer as may be appointed in this behalf, it is absolutely clear that the Post Office is not the agent of the Election Commission. Reliance has also been placed upon Section 27 of the General Clauses Act which contains the meaning of service by post and says that whether the expression 'serve' or either of the expressions 'give' and 'send' or any other expression is used then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. Here it is not a question of service but of actual delivery of the petition to the Election Commission. Section 27 has, therefore, no application. It is also apparent from the record that the petition was received by the Election Commission on 26th May, 1952. It is, therefore, held that the Post Office was not the agent of the Election Commission and the petition must be deemed to have been presented on 26th May, 1952, and is, therefore, clearly time-barred.

Point No. 2.—Section 85 of the Representation of People Act says that if the provisions of Section 81, Section 83 or Section 117 are not complied with, the Election Commission shall dismiss the petition:

Provided that if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor, the Election Commission may in its discretion condone such failure.

The Election Commission did not pass any order condoning the delay in the presentation of the petition. From the mere fact that the Election Commission did not dismiss the petition under Section 85, it does not follow that it condoned the delay. Under the proviso to Section 85, the delay could be condoned in its discretion by the Election Commission on being satisfied that sufficient cause existed for the petitioners' failure to present the petition within the period prescribed therefor. This evidently postulates a specific order condoning the delay. Reliance in support has been placed by the respondent No. 1 upon the Privy Council case reported in 1917 A.I.R. Privy Council 179 where it was held that if an appeal filed beyond limitation without notice to the opposite party is admitted by the admitting Judge after excusing the delay under Section 5 Limitation Act, it must be regarded as a tacit term of the order admitting the appeal that though unqualified in expression it should be open to reconsideration at the hearing at

the instance of the party prejudicially affected and at the hearing the Court has jurisdiction to reconsider the sufficiency of the cause shown and to dismiss the appeal as time barred. In this case, there was only an endorsement by an official authorised to receive the election petition and there was no condonation of the delay as such by the Election Commission, the only authority competent to condone the delay.

It is, therefore, clear beyond any shadow of doubt that the delay in presenting the election petition was not condoned by the Election Commission.

At all events, the powers of the Tribunal under Section 90(4) of the Representation of the People Act are not fettered by an order of the Election Commission condoning the delay.

**Point No. 3.**—It has been argued on behalf of the petitioners that they availed of the postal agency to which they were entitled under Section 81 for sending the election petition which in the normal course should have been delivered to the Election Commission the following day namely 24th May, 1952, and if for certain reasons, there was a departure from the normal course then it is a sufficient cause for condoning the delay in presenting the election petition. There is no provision in the Representation of the People Act giving the Election Tribunal a discretion to condone the delay in the presentation of a petition. A discretion in the matter is however given to the Election Commission by the proviso to Section 85. It is, therefore, doubtful if the Tribunal has a discretion to condone the delay. Section 5 of the Limitation Act does not in terms apply to election petitions. It can, therefore, be only on the principles of equity, justice and good conscience that the Tribunal, assuming that it has such a discretion, may condone the delay. It is, however, not possible to hold that there is a sufficient ground for condoning the delay. The petitioners had 60 days for filing the petition but for reasons known to them they sent the petition by registered post on the last day but one. This they did in spite of the very clear instructions contained in Chapter 13 of the Hand Book issued by the Election Commission. It is also not possible to hold that in the normal course the petition would have been delivered to the Election Commission on the 24th May, 1952, and there was a departure from this normal course. The four acknowledgments filed by the respondent No. 1 show that the registered letters were delivered to the Election Commission either on the 3rd or 4th day and never on the 2nd day. In no circumstances, could, therefore, the petition have been delivered to the Election Commission earlier than the 26th May, 1952. It is clearly a case of carelessness, if not negligence, on the part of the petitioners and in a long series of decisions under Section 5 of the Indian Limitation Act, it has been held that want of care and attention is not a sufficient cause for condoning the delay. In our view, there is no sufficient ground for condoning the delay in presenting the petition.

It is, therefore, held that the petition is barred by limitation and is liable to be dismissed.

#### ORDER

The election petition is dismissed. The petitioners will bear their own costs and pay Rs. 150 as costs to the respondent No. 1 and Rs. 75 to the respondent No. 2.

(Sd.) J. D. SHARMA,

(Sd.) C. JACOB,

(Sd.) S. N. AGARWAL.

AJMER,  
The 12th November, 1952.

P. S. SUBRAMANIAN,  
Officer on Special Duty.